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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,577	10/18/2001	Joseph B. Vergona	53394.000491	5207

7590 03/19/2003

Christopher C. Campbell, Esq.
Hunton & Williams
Suite 1200
1900 K Street, NW
Washington, DC 20006-1109

EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,577

Applicant(s)

VERGONA, JOSEPH B.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 3-6 and 8-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by
Mishima *et al.* (US 6,383,170 B1)

Regarding claim 1, Mishima *et al.* teach an absorbent article (1) comprising:

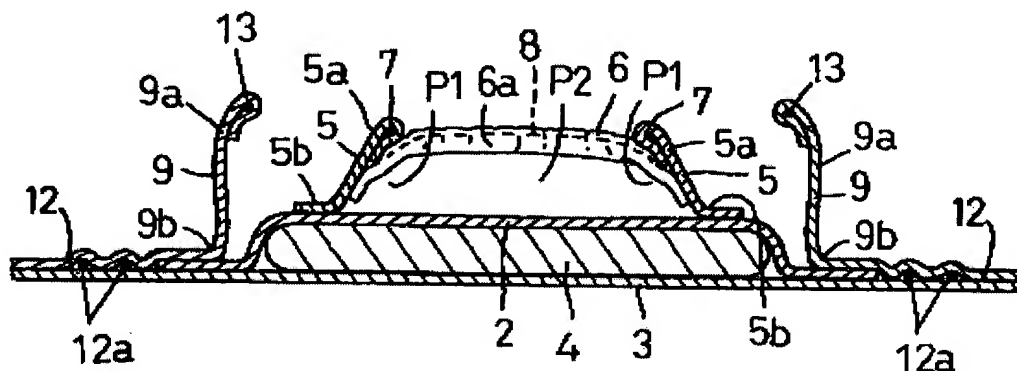
a top sheet (2);

a back sheet (3);

an absorbent core (4) disposed between at least a portion of said top sheet (2) and at least a portion of said back sheet (3), wherein a first pair of vertical cuffs (5) are mounted on the top sheet (2) opposite one another along respective side edges (5b) of said absorbent core (4), said top sheet (2) and said absorbent core forming a core assembly (2, 4), wherein said first pair of vertical cuffs (5) extend upward from respective side edges (5b) of said core assembly (2, 4) to define a first region there-between for containing body exudates; and

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a second pair of vertical cuffs (9) mounted on said back sheet (3) on opposite sides of said core assembly (2, 4) and laterally outboard of said first pair of vertical cuffs (5), creating a second region between said core assembly (2, 4) and said second pair of vertical cuffs (9) for containing body exudates (see Fig. 5, below).



Regarding claim 3, Mishima *et al.* teach a top sheet (2) partially wrapped around an absorbent core (4).

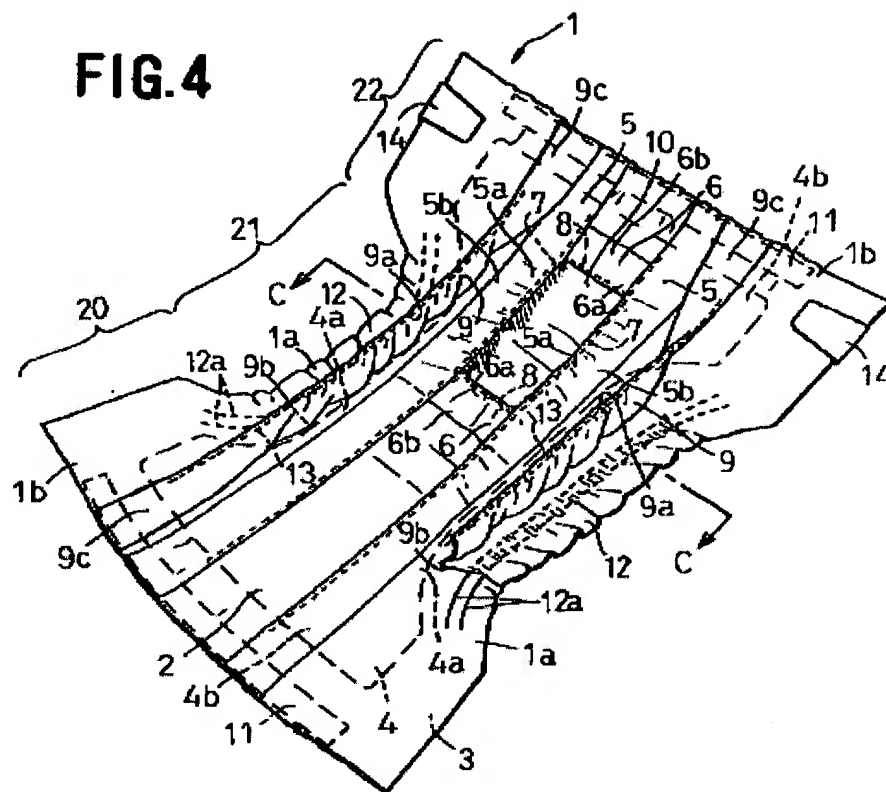
Regarding claim 4, Mishima *et al.* teach a top sheet (2) made from a liquid permeable non-woven material (col. 5, lines 3-5).

Regarding claim 5, Mishima *et al.* teach a back sheet (3) made from a liquid impermeable material (col. 5, lines 5-8).

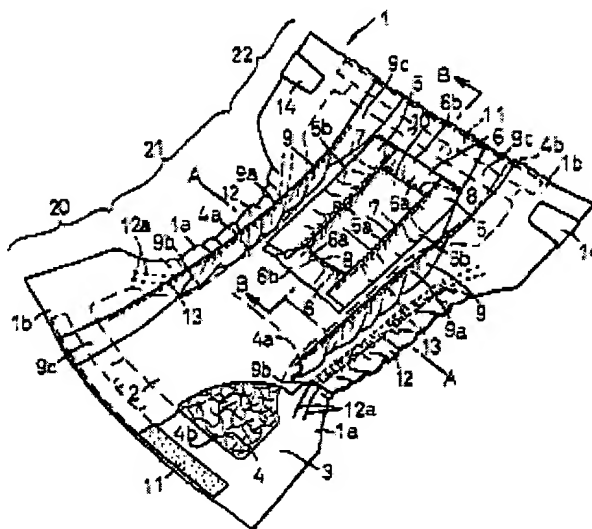
Regarding claim 6, Mishima *et al.* teach the use of polyethylene (col. 5, line 34).

Regarding claim 8, Mishima *et al.* teach a core assembly (2, 4) centered on said back sheet (3), and extending along the entire length of the back sheet (3).

Regarding claim 9, Mishima *et al.* teach a first pair of vertical cuffs (5) extending along the entire length of the core assembly (2, 4) (see Fig. 4, below).



Regarding claim 10, Mishima *et al.* teach a first pair of vertical cuffs (5) extending only partially along the length of the core assembly (2, 4)(see Fig. 1, below).



Regarding claim 11, Mishima *et al.* teach a second pair of vertical cuffs (9) extending along the entire length of the back sheet (3)(*see* Fig. 1, above).

Regarding claims 12 and 13, Mishima *et al.* teach first and second pairs of vertical cuffs (5, 9) which are made of liquid impermeable material (col. 5, lines 9-12).

Regarding claim 14, Mishima *et al.* teach an absorbent article (1), comprising : a top sheet (2);

a back sheet (3);

an absorbent core (4) disposed between at least a portion of said top sheet (2) and at least a portion of said back sheet (3), wherein a first pair of vertical cuffs (5) are mounted on the top sheet (2) opposite one another along respective side edges (5b) of said top sheet (2) and on top of said absorbent core (4), said top sheet (2) being partially wrapped around said absorbent core (4) forming a core assembly (2, 4), wherein said first pair of vertical cuffs (5) extend upward from respective side edges (5b) of said core assembly (2, 4) to define a first region there-between for containing body exudates;

a second pair of vertical cuffs (9) mounted on said back sheet (3) on opposite sides of said core assembly (2, 4), creating a second region between said core assembly (2, 4) and said second pair of vertical cuffs (9) for containing body exudates (*see* Fig. 5, above).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

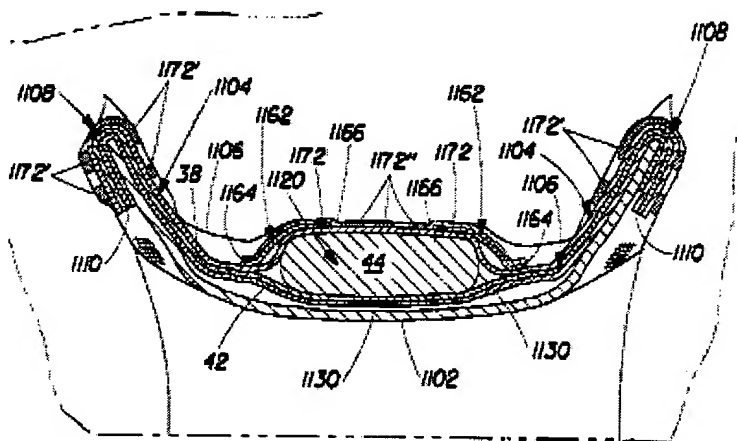
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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mishima *et al.* as applied to claims 1, 3-6 and 8-14 above, and further in view of VanRijswijck *et al.* (US 6,120,488 A).

Mishima *et al.* expressly teach every element of the claimed invention except a chassis upon which the back sheet is mounted.

VanRijswijck *et al.* teach a chassis (1102) upon which the back sheet (42) of an absorbent article is mounted (*see* Fig. 11, below).

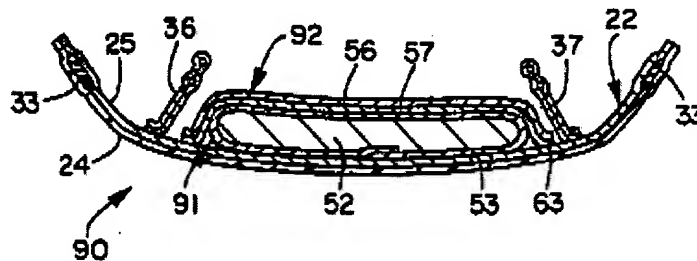


At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the chassis or panty of VanRijswijck *et al.* with the diaper as taught by Mishima *et al.* in order to provide a secure fit upon a wearer's undergarments (*see* VanRijswijck *et al.* col. 23, lines 16-37).

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mishima *et al.* as applied to claims 1, 3-6 and 8-14 above, and further in view of Roessler *et al.* (US 5,613,959 A).

Mishima *et al.* expressly teach every element of the claimed invention except for a transfer layer.

Roessler *et al.* teach a transfer layer (57)(see Fig. 10, below).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the transfer layer of Roessler *et al.* with the diaper as taught by Mishima *et al.* in order to enhance diaper dryness (see Roessler *et al.* col. 11, lines 47-51).

Response to Arguments

Applicant's arguments filed 03/03/2003 have been fully considered but they are not persuasive.

Regarding claims 1, 2, and 4-13, Applicants assert that Mishima *et al.* fail to show a second set of vertical cuffs attached to the backsheet laterally outboard of the absorbent core assembly. This argument is not persuasive because as shown by figure 5, above, the reference shows a second set of vertical cuffs (9) attached to the backsheet (3) laterally outboard of the absorbent core assembly (2, 4). While the inner edge of the cuff (9) overlies the outer edge of the topsheet (2), the rest of the cuffs (9) are attached to the backsheet. Applicants assert several advantages provided by the present invention, however, there is no claimed limitation to patentably distinguish the invention from that shown by the reference.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a product with continuously open region between a first set of vertical cuffs attached to the core assembly so as to use the entire length of the absorbent core) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 3 and 14, applicants assert that Mishima *et al.* fail to show a top sheet which partially wraps around an absorbent core.

This argument is not persuasive because as shown by figure 5, above, Mishima *et al.* show a topsheet that **partially** wraps around an absorbent core. It fully covers the wearer facing surface and side edges (4a) of the absorbent core, thus covering the entire core except for the garment facing surface. *Merriam Webster's Collegiate Dictionary Tenth Edition* (1993) defines one of the meanings of "wrap" is to cover, it does not necessarily mean tucked under, particularly in the case of the present invention which qualifies the term "wrap" with the term "partially."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

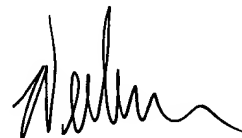
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (703) 605-1184. The examiner can normally be reached Monday-Friday.

In the event the examiner is not available, the examiner's supervisor, Weilun Lo may be reached at phone number (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0858.



Michael Bogart
March 13, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700